

ARKANSAS SUPREME COURT

No. 08-533

EDWARD LOVELESS
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, MIKE BEEBE,
GOVERNOR, AND ROY AGEE,
ARKANSAS DEPARTMENT OF
CORRECTION KEEPER OF
RECORDS
Appellees

Opinion Delivered September 25, 2008

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF AND APPOINTMENT OF
COUNSEL AND TO STAY APPEAL
TO COMPLETE RECORD ON
APPEAL, PETITION FOR WRIT OF
CERTIORARI, AND MOTION FOR
DUPLICATION OF BRIEF AT
PUBLIC EXPENSE [CIRCUIT
COURT OF JEFFERSON COUNTY,
CV 2008-27, HON. ROBERT H.
WYATT, JR., JUDGE]

PETITION FOR WRIT OF
CERTIORARI DENIED; APPEAL
DISMISSED; MOTIONS FOR
EXTENSION OF TIME AND
APPOINTMENT OF COUNSEL, AND
FOR DUPLICATION OF BRIEF
MOOT.

PER CURIAM

Appellant Edward Loveless, a prisoner incarcerated in the Arkansas Department of Correction, filed a pleading styled as a petition for declaratory judgment and writ of mandamus in Jefferson County Circuit Court. The trial court dismissed the petition and appellant has lodged an appeal of that order in this court. He now brings a petition in which he seeks a writ of certiorari to include a copy of the petition for declaratory judgment within the record. In addition, appellant has filed two motions in which he requests an extension of time to file his brief, appointment of counsel,

a stay of the appeal while the record on appeal is completed, and duplication of his brief at public expense.

We first consider appellant's request that this court issue a writ of certiorari in order to supplement the record to include a copy of the declaratory-judgment petition. The record before this court does contain a copy of a lengthy petition, over 100 pages in length, filed on January 8, 2008. Appellant provides no other petition that he asserts was filed and the petition in the record is the petition referenced in the order appealed as the petition that was acted upon. As the record before this court appears to be complete and appellant fails to identify any missing portion of it, we deny the petition for writ of certiorari.

We do not consider the remaining motions, however, as we dismiss the appeal. Appellant's petition consisted of a group of exhibits, including the judgments in Pope County Circuit Court resulting in his incarceration, followed by a statement in which he summarized the contents of the exhibits and complained of what he characterized as constitutional violations and other procedural defects in the proceedings concerning his convictions. This series of complaints did not culminate with any clear request for relief of any kind. The petition did not include a request for a specific declaration by the court. What is clear from the petition contained in the record and the complaints included in it concerning the exhibits, however, is that appellant sought to challenge the judgments and desired some form of postconviction relief.

Although an appellant may have labeled his petition as one for declaratory judgment, where he sought to attack his judgment through the petition, the petition must be considered pursuant to Arkansas Rule of Criminal Procedure 37.1 because the grounds for relief were clearly within the purview of the rule and not grounds for declaratory judgment or mandamus. *See State v. Wilmoth*,

369 Ark. 346, 350-351, ___ S.W.3d ___, ___ (2007) (citing *Bailey v. State*, 312 Ark. 180, 182, 848 S.W.2d 391, 392 (1993) (per curiam)). An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam).

Appellant's petition was defective as a petition for postconviction relief under Rule 37.1 for a number of reasons. Appellant previously sought relief under the rule, his petition was denied, and the appeal dismissed. *Loveless v. State*, CR 05-648 (Ark. Jan. 26, 2006) (per curiam). A subsequent petition following a denial with prejudice is not permitted under Arkansas Rule of Criminal Procedure 37.2(b). Moreover, the petition was not timely filed in the court that imposed the sentence under Rule 37.1(a).

Appellant's petition, although it purported to seek declaratory judgment, in effect sought postconviction relief. It was filed in a court that was without jurisdiction to provide any postconviction relief. As a result, it is clear that the appellant could not prevail on appeal. We therefore dismiss the appeal and the remaining motions are moot.

Motion for writ of certiorari denied; appeal dismissed; motions for extension of time and appointment of counsel, and for duplication of brief moot.

Glaze, J., not participating.